IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 05 OF 2007
IN
SUMMARY SUIT NO. 1822 OF 2001

Smt. Reena Ravindra Khona .. Plaintiff.

V/s.

M/s.Anchal Polytex & Ors. .. Defendants.

Mr.Simil Purohit i/by M/s.L.C.Tolat & Co.for the plaintiff.

Mr. Raju Morey with K.T.Kukreja i/by M/s. Kukreja & Associates for the Applicants/Defendants in support of Notice of Motion.

CORAM : S. A. BOBDE, J.

DATED : 16th JANUARY, 2007.

P.C.:

. This is a motion taken out by the judgment debtor for setting aside the decree in the sum of Rs. 13,48,998.42/- passed against him under Order 37 of the Code of Civil Procedure.

2. This motion is taken out under Order 37, Rule 4 of the Code of Civil Procedure. It appears that on 10.02.2003, the summary suit was called out for hearing before the learned single Judge when the judgment debtor

remained absent. The learned Judge therefore, decreed the suit.

3. The Applicant has thereafter taken out the motion on 03.01.2007. In the affidavit in support, the applicant states that he had engaged an Advocate who had about 16 cases to attend to on 10.02.2003. As a result, the Advocate could not attend the matter, since he was held up in the another court. The Advocate apparently did not inform the Applicant till 30th November, 2006 when he was served with an insolvency notice issued by this court at the instance of the decree holder. It is after making the enquiries that the applicant/judgment debtor, took out this notice of motion on 03.01.2007. Since there is no effective denial to the affidavit in support of the judgment debtor, it seems that the applicant has taken all the necessary care to ensure that the suit is defended by engaging an Advocate. The applicant has given the name of the Advocate and details of the cases which were on board on 10.02.2003, which the Advocate had to attend to. In the circumstances, it cannot be said that the Applicant was not diligent in pursuing the matter. There is no reason to doubt that the applicant came to know about the decree when he was served with an insolvency notice from this court. In the these circumstances, it appears to be the fit case

to condone the delay in taking out this notice of motion.

4. The main contention of the applicants is that the matter ought to have been referred to arbitration, as mentioned in the Bye Laws of East India Cotton Association, and that, therefore, this court ought not to have exercised its jurisdiction. The learned counsel for the applicants Mr.Morey, also referred to the other aspects of the matter such as rate of interest, quantity, quality of the goods etc., which are the subject matter of the suit. It is not necessary to make any comment on the merits of that argument. Suffice it to say that there seems to be sufficient and specific reason for setting aside the decree to enable the applicant to contest the claim against him on the points referred to above.

5. In the circumstances, I consider it appropriate, in the interest of justice, in view of the special circumstances referred to above, to set aside the ex-parte decree dated 10.02.2003 but subject to the condition that the judgment debtor deposits in the court sum of Rs.10 lakhs within a period of two months from today. He shall file an undertaking to that effect within a period of one week from today.

6. Failure to file undertaking, as above, the decree holder/respondents shall be entitled to proceed with the execution of the decree and insolvency notice. On filing of the undertaking, the respondent would not be entitled to execute the decree.

(S.A.BOBDE,J.)

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